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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE:

4 AMERICAN INTERNATIONAL GROUP, INC.

Lead Case:

5 ERISA ACTIONS

04 CV 9387 (JES)

6 -----X

New York, N.Y.

June 29, 2005

4:10 p.m.

8 Before:

9 HON. JOHN E. SPRIZZO,

District Judge

11 APPEARANCES

12 WOLF POPPER

13 Attorneys for Plaintiffs

14 BY: MARIAN P. ROSNER

15 KELLER ROHRBACK

Attorneys for Plaintiffs

16 BY: GARY A. GOTTO

17 WECHSLER HARWOOD

Attorneys for Plaintiffs

18 BY: ROBERT I. HARWOOD

19 SQUITIERI & FEARON

Attorneys for Plaintiffs

20 BY: LEE SQUITIERI

21 PAUL, WEISS, RIFKIND, WHARTON & GARRISON

Attorneys for Defendant AIG

22 BY: LEWIS CLAYTON

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1 THE COURT: Go ahead.

2 MS. ROSNER: Marian Rosner from Wolf Popper, and I  
3 would like to first move for the admission pro hac vice of Gary  
4 Gotta of Keller Rohrbach. And I have the papers.

5 THE COURT: These are the ERISA actions; right?

6 MS. ROSNER: The ERISA actions. There are eight of  
7 these actions presently before you, and we are very pleased to  
8 finally have you as the judge. We have been bounced to about  
9 four different judges.

10 THE COURT: Why was this case bounced around so much?

11 MS. ROSNER: I guess for the same reason, they have  
12 shares.

13 THE COURT: They didn't have them, they bought them.  
14 Jeffrey Grant told me a long time ago that if you got a case  
15 you don't want, buy shares of stock.

16 MS. ROSNER: There are eight ERISA cases before your  
17 Honor. Six of them support my firm and Keller Rohrbach as  
18 co-counsel. That motion is opposed by Mr. Squitieri and  
19 Mr. Harwood.

20 We need, I guess, a hearing date for that motion.

21 THE COURT: Why is there a lead counsel in an ERISA  
22 action?

23 MS. ROSNER: That's the precedent, your Honor.

24 THE COURT: They're not Securities Act claims; are  
25 they?

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1 MS. ROSNER: No, they're all the ERISA claims.

2 Mr. Gotto could address that.

3 MR. CLAYTON: Your Honor, Lewis Clayton from Paul  
4 Weiss for the AIG defendants.

5 From our perspective, because I was listening to the  
6 derivative argument, and I think the point came through very  
7 clearly we should do this once, we should do it efficiently, we  
8 shouldn't do duplicative discovery. From our perspective, we  
9 are neutral as to who the lead counsel is on the ERISA side,  
10 but we would like a lead counsel because it makes it easier for  
11 us to deal with issues like discovery and scheduling.

12 THE COURT: If you agree on that, what is the fight  
13 about?

14 MS. ROSNER: We don't agree.

15 THE COURT: Tell me what you don't agree on, I'll rule  
16 today on the issue.

17 MS. ROSNER: We were the first firm to file an ERISA  
18 case, and we did so after an investigation that learned that  
19 AIG merged with a company called American General, and the AIG  
20 stock plan became -- it was worth \$600 million as result of  
21 that merger. We were the first file and find that out and  
22 consolidate claims. To make a long story short, we were on  
23 file for maybe five months alone.

24 THE COURT: When did you file your action?

25 MS. ROSNER: Here.

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1 THE COURT: When?

2 MS. ROSNER: In December. We then filed an 81 page  
3 amended complaint and were contacted by other people who were  
4 in different plans within the AIG ERISA plans, and we filed an  
5 81 page amended complaint in I believe April. We were still  
6 alone in the case.

7 Eventually about seven more cases were filed using our  
8 complaint as a model, and we then were contacted by Keller  
9 Rohrback, which is one of the premium firms in the country, on  
10 AIG, and we agreed to be co-lead counsel with them, given the  
11 fact that we had both the initiative and whatever and they also  
12 had the expertise.

13 THE COURT: Are these going to be class actions at  
14 some point?

15 MS. ROSNER: Class action. As I said, the majority of  
16 the ERISA cases on the file support that structure. There  
17 really is no reason why it shouldn't be granted, except the  
18 fact that two of the firms simply dispute our being co-lead  
19 counsel and want to be co-lead counsel themselves.

20 THE COURT: Why?

21 MR. SQUITIERI: Your Honor, Lee Squitieri from  
22 Squitieri & Fearon. We are in fact a competing lead counsel  
23 group.

24 Let me give you a fuller background than what  
25 Ms. Rosner gave. Her first complaint filed in November,

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1 December, whenever it was, was not as full as it is now. It  
2 was just a bid rigging case that basically copied the Attorney  
3 General's general complaint, said these bid rigging things made  
4 a pension purchase of stock an imprudent investment. In April  
5 they filed an amended complaint. We filed our complaint, the  
6 Phillips complaint, approximately a week later. Mr. Harwood  
7 filed after that.

8 We approached Wolf Popper and said there are three  
9 cases on file, I think there may have been four at that time,  
10 not eight, not ten, and we said why don't we work together on  
11 this case. The response from that firm, through Ms. Rosner's  
12 partner Mr. Levy, was no, we are controlling the case, we were  
13 here first, we're not working with anybody else in any  
14 cooperative way, we'll be the lead counsel and the sole lead  
15 counsel.

16 MS. ROSNER: That's not --

17 THE COURT: Well, you'll get a chance to respond.

18 MR. SQUITIERI: That's not the way to do that. We  
19 have well-established claims here, and we filed a complaint  
20 which is an original complaint.

21 THE COURT: These are ERISA claims. What is it, kind  
22 of joint stockholders, what is it, an employee fund?

23 MS. ROSNER: Employee funds.

24 MR. SQUITIERI: 401(K) plans.

25 THE COURT: Subject to the abuse of discretion

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1 standard, I guess.

2 MS. ROSNER: That's correct.

3 MR. SQUITIERI: Yes. So we tried to come to an  
4 accommodation with them to joint leadership structure,  
5 efficient, and one person would be -- appoint one person but  
6 everybody would have some decision making input, and they  
7 refused. The Keller Rohrback firm only came in at the very  
8 end.

9 THE COURT: Who else was objecting? You, I take it.

10 MR. SQUITIERI: There's one competing motion.

11 THE COURT: I don't understand why I should appoint  
12 lead counsel at all in this case.

13 MS. ROSNER: Well, your Honor, the precedent has been  
14 to do that in ERISA cases.

15 THE COURT: But tell me why, not what other judges  
16 have done.

17 At some point I will have to rule upon a motion for  
18 class action certification, at that time point I will decide  
19 basically what lawyers should represent the lead class action  
20 plaintiff. Once I determine that, we'll have a lead counsel.

21 MR. HARWOOD: With eight cases and eight sets of  
22 lawyers pounding the defendants with eight separate requests  
23 and scheduling class action depositions, making eight different  
24 class action notices --

25 THE COURT: I could deal with that very simply by

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1 staying discovery. So that's the way I resolve the motion for  
2 class action.

3 MS. ROSNER: The precedent has been in this Court, and  
4 Mr. Gotto from Keller Rohrbach has been in some of the biggest  
5 ERISA cases, Worldcom, Global Crossing, et cetera, et cetera,  
6 has always been a lead or co-lead counsel.

7 THE COURT: But there will be one once I resolve the  
8 class action. The problem with this is I don't want to appoint  
9 lead counsel now then later on decide that the person that I  
10 appointed as lead counsel is not representing a plaintiff who  
11 adequately represents the interests of the class, because  
12 that's a separate threshold you have to cross. And once I  
13 cross that threshold as to who is the most representative  
14 member of the class to prosecute the action on behalf of the  
15 class, then at that point in time I'm going to rule on whether  
16 that lawyer should be taking the lead in this litigation. So  
17 if I do it now, I face the risk that I may change my mind here,  
18 and what good is it?

19 MR. HARWOOD: Your Honor has discretion to change his  
20 mind later.

21 THE COURT: My question is what is gained by  
22 appointing lead counsel now other than appointing someone for  
23 the purpose of funneling --

24 MR. HARWOOD: It would streamline the litigation, your  
25 Honor, and make it easier for the defendants to coordinate with



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1 one point person, and it would guide strategy.

2 THE COURT: When we get to discovery, that will be  
3 true, but I'm not going to go to discovery until we have  
4 discovery first on the class action motion.

5 MR. GOTTO: Your Honor, if I may, Gary Gotto.

6 The procedure that we followed in many of the  
7 substantial cases, Enron, Worldcom, some of the other case that  
8 we have been lead counsel with and has worked quite well is  
9 there to be initial ERISA only discovery, limited discovery,  
10 ERISA plan documents, committee minutes, et cetera. That then  
11 permits the filing of a consolidated amended complaint that  
12 names the right people as defendants.

13 THE COURT: I assume you have had access to those  
14 documents already before you brought your complaint.

15 MR. GOTTO: Only some of them. We have not had access  
16 to committee minutes or documents evidencing the appointment of  
17 planned fiduciaries.

18 So the procedure would be to get those documents, to  
19 file an amended complaint, and for that to be the first step  
20 before the class certification procedure. And in order to  
21 streamline and I think make that process efficient, having lead  
22 counsel appointed to do so is what makes the most sense, and  
23 that I think has been the reason other courts have followed  
24 that procedure.

25 MR. CLAYTON: If I may, your Honor, we don't have any



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1 problem with providing the kinds -- presumably they have the  
2 documents they need because they already filed eight complaints  
3 or so, but we don't have any problem with providing them the  
4 materials that they're due under the ERISA statute. As your  
5 Honor may know, under the ERISA statute, someone who is a  
6 participant, whether there is litigation or not gets access to  
7 plan documents.

8 THE COURT: They have a right to see them under the  
9 law.

10 MR. CLAYTON: And we have given them. I don't know if  
11 we have given this particular set of lawyers --

12 THE COURT: That's why I was surprised when I'm told  
13 after the plaintiffs filed they haven't had access to the  
14 documents.

15 MR. CLAYTON: Absolutely. So if there are more  
16 materials they believe they are entitled --

17 THE COURT: Maybe nobody just went down and looked.

18 MR. CLAYTON: If there are more materials that they're  
19 entitled to under ERISA, we're happy to discuss that with any  
20 of the counsel who filed cases. And if we owe them  
21 documents --

22 What I don't want to have happen is for there to be  
23 discovery in this case, because, as your Honor says, number  
24 one, do we have an adequate class member, and there's going to  
25 be real issues here about adequacy on the class side. It's

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1 exactly the issues your Honor was focusing on.

2 THE COURT: Why don't I just assume that, save them  
3 the trouble of going down and looking at documents they have a  
4 right to see, that you make available to them whatever document  
5 they have a right to receive under the law.

6 MR. CLAYTON: Absolutely.

7 THE COURT: Make those available within the next two  
8 weeks.

9 MR. CLAYTON: If they want to give us a list of things  
10 they think we haven't given, we'll start talking to them  
11 immediately, your Honor.

12 THE COURT: Then I should proceed to the question of  
13 class action certification.

14 MS. ROSNER: Your Honor, the problem is we have to  
15 file a consolidated complaint, and one of the things that we  
16 need to do that is the identity of the retirement board, which  
17 has not been disclosed to us.

18 THE COURT: Identity of the retirement board?

19 MR. GOTTO: The individual fiduciaries.

20 MS. ROSNER: The name is John Does in the discovery we  
21 have so far.

22 THE COURT: I don't understand that.

23 MR. SQUITIERI: We'll get that.

24 THE COURT: That's got to be something that you're  
25 entitled to get under the law.

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1 MR. CLAYTON: We don't have to take the time of all  
2 the people sitting here to --

3 THE COURT: That's why I was surprised when I was  
4 told -- I think maybe nobody went down to look. That's all  
5 stuff that you have a right to see.

6 MR. GOTTO: Your Honor, to date their position has  
7 been as to the American General plan they would not provide the  
8 information because the litigation was pending.

9 THE COURT: American General plan?

10 MS. ROSNER: It's American General that merged with  
11 AIG, that's how the AIG plan got funded with the AGG stock.

12 THE COURT: Is there one plan or two?

13 MS. ROSNER: Three.

14 THE COURT: Three.

15 MR. CLAYTON: There at least were three plans.

16 But your Honor, I think the question of this very  
17 basic ERISA information that they seek is something we can work  
18 out. And I have not -- I don't question what counsel says, but  
19 I have not had any communications with him about this issue.

20 THE COURT: So I can appoint a lawyer for the purpose  
21 of passing on the information until we are ready to see the  
22 case, but I'm not prejudging the question of class action at  
23 this point.

24 MR. CLAYTON: Those are real issues.

25 THE COURT: Because I don't know upon what basis I

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1 would make the decision. The Securities Act tells me to do it  
2 based on the size of interest, but this is not that kind of  
3 case.

4 MS. ROSNER: Your Honor, under Rule 26G there are four  
5 factors that you apply in deciding lead counsel in a case like  
6 this. One is -- there are four factors, we cite them in our  
7 brief. One is the initiative of counsel so far getting the  
8 work done, two, general experience in the field, so --

9 THE COURT: All of which I will have to revisit for  
10 the class action motion.

11 MS. ROSNER: But someone has got to file the amended  
12 complaint. It's not productive to consult with eight people in  
13 order to agree on an amended complaint. Somebody has to take  
14 responsibility to file that complaint. Now we have done -- our  
15 complaint, like it or not, has been the model for everyone  
16 else's complaint. We have filed an 81 page amended complaint  
17 that basically contains all the claims and has plaintiffs' all  
18 three plans, which they do not.

19 THE COURT: I don't see why you can't cooperate with  
20 consolidating a claim.

21 MR. SQUITIERI: Your Honor, may I make a suggestion?

22 THE COURT: Yes.

23 MR. SQUITIERI: I will suggest you use your discretion  
24 to appoint the class counsel at the appropriate time. For the  
25 time being, perhaps the Court would consider designating

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1 Ms. Rosner's firm as first filed case, my firm as a second  
2 filed case as two coordinating counsels in the interim. And in  
3 other words, we take charge of coordinating, the defendant  
4 doesn't have to call eight attorneys, the Court doesn't have to  
5 call eight attorneys.

6 THE COURT: That's fine with me. I take it you'll  
7 take the responsibility of filing the second amended complaint.

8 MR. SQUITIERI: That's correct.

9 MS. ROSNER: Your Honor, I think that's unfair to  
10 Keller Rohrbach.

11 THE COURT: What's unfair about that? He's not being  
12 asked to work.

13 MR. GOTTO: Your Honor, the suggestion here is  
14 Mr. Squitieri filed the second case.

15 THE COURT: You know what we're talking about.  
16 Everyone worries about how the fees are going to be carved up  
17 at the end. But that's not something that you have to worry  
18 about now, that depends on who the class action lawyer is.  
19 That's where you are going to ultimately determine who gets  
20 what from the pie, so to speak. I practiced law for 25 years,  
21 I know what you're really fighting about.

22 MR. GOTTO: But your Honor, I think the point here,  
23 too, is that the complaint that gets filed needs to be the best  
24 complaint that can be filed in the best interest of the class.

25 MR. SQUITIERI: No one seeking to exclude input.

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1 THE COURT: I would assume you should all be able to  
2 agree upon a consolidated class action.

3 MS. ROSNER: I don't know, your Honor. They have a  
4 complaint --

5 THE COURT: If you can't all agree, I won't take a  
6 consolidated class action complaint, because if their argument  
7 is we don't like your consolidated complaint and we have -- we  
8 want it differently, then why should I proceed on the basis of  
9 a consolidated complaint when some of the people who are sued  
10 here don't like what you have done?

11 That's the whole thing here. They have clients they  
12 represent, individual clients, and they're not required to file  
13 the complaint that you want to file. That's the problem with a  
14 consolidated complaint, it only works if everybody agrees on  
15 what it's supposed to say. If you don't agree, then why should  
16 I take a consolidated complaint? I'll keep the three  
17 complaints the way they are. There is no reason for a  
18 consolidated complaint if the parties can't agree to what it  
19 should be.

20 MS. ROSNER: I don't know how the defendants feel  
21 about moving to dismiss against three separate complaints.

22 MR. CLAYTON: Your Honor, I think it's very easy to  
23 overestimate the differences. There are eight different  
24 complaints, they're not night and day. They're certainly not  
25 identical, but they're pretty similar. It isn't as if one is

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1 taking one approach --

2 THE COURT: All three of you are a committee to draft  
3 a consolidated complaint and coordinate discovery. You can  
4 delegate among yourselves what functions you want to perform.

5 MR. HARWOOD: Thank you very much.

6 MR. CLAYTON: Thank you, your Honor.

7 THE COURT: That takes care of it.

8 Now what about the class action motion?

9 MS. ROSNER: Who is the committee?

10 THE COURT: You are three are the committee.

11 MR. CLAYTON: Four.

12 THE COURT: Four, all right, fine. I don't care what  
13 it is, I thought there were just three.

14 MR. CLAYTON: As long as I am not on the committee.

15 THE COURT: Who is the fourth?

16 MR. SQUITIERI: Squitieri Fearon.

17 THE COURT: I thought you two were together.

18 MR. HARWOOD: Those two are together. We filed  
19 separate complaints.

20 THE COURT: So one, two, three, four. So you will be  
21 a committee of four and you will delegate yourselves what  
22 functions you want each person to perform.

23 MS. ROSNER: I thought you designated us to be the  
24 point person.

25 THE COURT: You can be the point person if you want



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1 to.

2 MS. ROSNER: We're the first filed case.

3 THE COURT: You can delegate among yourselves about  
4 who handles --

5 MS. ROSNER: If you don't appoint us, we'll be back  
6 here tomorrow with another motion.

7 MR. HARWOOD: This will come as a surprise to the  
8 Court, but the four people in front of you have worked together  
9 many, many years in many, many cases cooperatively. The  
10 argument you are hearing now has nothing to do with the quality  
11 of the consolidated complaint.

12 THE COURT: When am going to get a class action  
13 motion?

14 MS. ROSNER: You will, your Honor, but I thought you  
15 had appointed us as point person.

16 MR. HARWOOD: Judge, the four of us can work  
17 cooperatively.

18 THE COURT: I appointed a committee. If they all  
19 agree that you should be the point person, that's fine with me.  
20 If you don't agree and two are on one side and two are on the  
21 other, I will make the call.

22 MS. ROSNER: That's why I said we'll be back here.

23 THE COURT: Anyway, so that's enough for our purposes.  
24 What about the class action motion?

25 MR. CLAYTON: Your Honor, I would suggest that when

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1 they get together -- my prediction is that under your  
2 Honor's --

3 THE COURT: Why don't I fix a date for the filing of  
4 the consolidated complaint.

5 MR. CLAYTON: Then we'll work from there, because we  
6 need to see what is in that, then we can focus on the time.

7 THE COURT: So 30 days to file a consolidated class  
8 action complaint?

9 MR. GOTTO: On the assumption we get the materials  
10 in --

11 THE COURT: 60 days? I don't really care.

12 MR. HARWOOD: 60 days.

13 THE COURT: So 60 days, July 29th -- August 29th.

14 August 29th, I'm a month ahead of myself, or behind, I  
15 should say. Then we'll have another conference in September,  
16 you'll tell me what the situation is, whether you'll make a  
17 motion, bearing in mind how difficult it is to get a motion to  
18 dismiss granted, or whether or not you want to go ahead with  
19 the class action discovery.

20 MR. CLAYTON: We will look at it.

21 Thank you, your Honor.

22 THE COURT: Have a good day now.

23 o0o

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25